

## **MINUTES**

### **MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON EDUCATION AND CULTURAL RESOURCES**

**Call to Order:** By **CHAIRMAN BILL GLASER**, on January 17, 2001 at 3:00 P.M., in Room 405 Capitol.

#### **ROLL CALL**

**Members Present:**

Sen. Bill Glaser, Chairman (R)  
Sen. Jack Wells, Vice Chairman (R)  
Sen. John C. Bohlinger (R)  
Sen. Edward Butcher (R)  
Sen. John Cobb (R)  
Sen. Jon Ellingson (D)  
Sen. Jim Elliott (D)  
Sen. Alvin Ellis Jr. (R)  
Sen. Sam Kitzenberg (R)  
Sen. Don Ryan (D)  
Sen. Debbie Shea (D)  
Sen. Mignon Waterman (D)

**Members Excused:** Sen. Dale Berry (R)  
Sen. Mike Sprague (R)

**Members Absent:** None.

**Staff Present:** Linda Ashworth, Committee Secretary  
Eddy McClure, Legislative Branch

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: SB 60, 1/11/2001; SB 233,  
1/11/2001; SB 214, 1/11/2001  
Executive Action:

#### **HEARING ON SB 214**

**Sponsor:** SEN. BILL TASH, SD 17, Dillon

**Proponents:**        **Stephen Hulbert, Western Montana College**  
                         **Dr. Richard Crofts, Commissioner of Higher**  
                         **Education**  
                         **Arlene Hannawalt, Montana Guaranteed Student Loan**  
                         **Program**

**Opponents:**        **None**

**Opening Statement by Sponsor:**

**SEN. TASH, SD 17**, commented that there would be a definite advantage in changing the title of Western Montana College of The University of Montana to The University of Montana - Western. The name change points out the importance of the association with the University of Montana and puts the emphasis on Western.

***{Tape : 1; Side : A; Approx. Time Counter : 0 - 2}***

**Proponents' Testimony:**

**Stephen Hulbert, Chancellor of Western Montana College**, spoke in support of SB 214. The proposal would be less awkward and would be more consistent with the main institution. Because of the current name the institution has had difficulties obtaining research grants. It has not been seen as a four year institution and therefore, they have often had rejections on proposals.

**Dr. Richard Crofts, Commissioner of Higher Education**, testified that he supported SB 214 and the bill also carries the support of **President Dennison** and the **Commissioner's Office**. The name change has been heard by the Board of Regents and **Commissioner Crofts** was confident that the board would unanimously concur.

**Arlene Hannawalt, Director of the Montana Guaranteed Student Loan Program**, asked the committee to approve expanding the authority to the **Montana Guaranteed Student Loan Program**, on the state level, to agree with that which is on the federal level. She explained that in 1988, the Congress, during the re-authorization of the Higher Education Act, expanded the authority of guarantee agencies to play a more active role in the K-12 programs.

***{Tape : 1; Side : A; Approx. Time Counter : 2 - 7}***

**Opponents' Testimony:**        **None**

**Informational Testimony:** **None**

**Questions from Committee Members and Responses:**

**SEN. JOHN BOHLINGER** asked **Commissioner Crofts** if the regents have given any consideration to finding one umbrella under which the university system could be placed.

**Commissioner Crofts** responded that at the moment, in regards to changing the name of any of the campuses, this is the only proposal under consideration. The regents commissioned a study and evaluation of restructuring that was implemented in 1994. The regents have identified a list of issues that will be addressed as they take another look at the restructuring process, after six year. **Commissioner Crofts** noted that none of those issues included renaming all of the campuses of the university system.

**SEN. BOHLINGER** questioned **SEN. TASH** on his feelings of finding a common name that would identify campuses around the state. **SEN. TASH** stated that this is being accomplished under the umbrella **SEN. BOHLINGER** suggested. The University of Montana - Western is a distinction.

**SEN. JOHN COBB** asked if **Eddye McClure, Legislative Branch** would clarify the number of subjects per bill. **Ms. McClure** remarked that the title of the bill addressed the fact that both of the subjects being discussed are related to the topic.

*{Tape : 1; Side : A; Approx. Time Counter : 7 - 15}*

**Closing by Sponsor:**

**SEN. TASH, SD 17**, closed on SB 214.

**HEARING ON SB 60**

**Sponsor:** **SEN. BEA MCCARTHY, SD 29, ANACONDA**

**Proponents:** **Dr. Richard Crofts, Commissioner of Higher Education**  
**Stephen Hulbort, Chancellor of Western Montana College, Dillon**  
**SEN. ALVIN ELLIS, SD 12**

**Opponents:** **None**

**Opening Statement by Sponsor:**

**SEN. BEA MCCARTHY** introduced SB 60. She stated that SB 60 was a non-monetary bill. It's an act approving the compact for the

Education Commission of the States, providing for the appointment of seven commissioners from the state of Montana and providing an effective date. She provided the committee with written information, pertaining to the ECS, **EXHIBIT(eds13a01)**.

**SEN. MCCARTHY** referred to the fiscal note, reminding the committee that there was no money involved in the passing of this bill. The commission will not charge Montana dues, asking that we please join. **SEN. MCCARTHY** felt that at some time Montana may be asked to pay dues but for the foreseeable future the commission will not ask for dues.

*{Tape : 1; Side : A; Approx. Time Counter : 15 - 20}*

**Proponents' Testimony:**

**Dr. Richard Crofts, Commissioner of Higher Education**, stated that he had participated in some of the discussions, this past summer with the interim committee, when this presentation was made and believes that it would be very helpful and beneficial for the state of Montana to join the Education Commission of the States. He informed the committee that it is an organization from which we could learn a great deal. More importantly, it is one of the major organizations that helps develop the agenda for education, nationally. It provides the opportunity to participate in the development of an agenda that is frequently embraced by federal officials and elected officials.

**Stephen Hulbert, Chancellor of Western Montana College**, rose in support SB 60. He asked for support of SB 60 because of the value it brings to individuals in state government, the legislature and people in education. He reminded the committee that there are very few opportunities for people to get together and discuss issues. **Chancellor Hulbert** reinforced the fact that this is a major research opportunity available to legislators and state officials.

**SEN. ALVIN ELLIS, SD 12**, seconded what those before him stated. He related his experience attending conference in Phoenix and Billings.

*{Tape : 1; Side : A; Approx. Time Counter : 20 - 29}*

**Opponents' Testimony:** None

**Informational Testimony:** None

**Questions from Committee Members and Responses:**

**SEN. MIKE SPRAGUE** asked for clarification on Page 7, Line 17.

**SEN. MCCARTHY** responded that it was her understanding that in other states the individual completes their term on the **ECS** as a former senator. The continuity was kept in place until their term expired.

**SEN. SPRAGUE** asked for more clarification as to whether the senator would be an ex-officio senator. **SEN. MCCARTHY** answered that one would say, "as an ex-legislator", but in clarifying stated that this wording is directly out of the compacts in all forty-eight states that are members. **SEN. MCCARTHY** pointed out that **SEN. SPRAGUE'S** question raised an interesting point. She stated that in drafting this bill they did not take into consideration that many of the states involved do not have term limits and she would not be opposed to an amendment.

**SEN. ED BUTCHER** questioned **SEN. MCCARTHY** whether she thought this is a vehicle to start getting a centralized national education policy. **SEN. MCCARTHY** replied that she did not see this going in that direction. She reiterated that it could be used to compile information and to bring individuals to the state to help with difficult decisions.

**SEN. BUTCHER** commented that Page 2, Line 18 looks as if the Education Commission of the States is trying to set a national policy for education. **SEN. MCCARTHY** answered that she did not interpret that as **SEN. BUTCHER** did. Most of the information that came out of workshops that she attended were recommendations, not mandates.

*{Tape : 1; Side : A; Approx. Time Counter : 29 - 32}*

**SEN. BUTCHER** inquired to the direction of the commission. **SEN. MCCARTHY** replied that her mission is the education of children beginning with the improvement of education and working for children.

**SEN. JOHN BOHLINGER** related his thirty-three years learning and running a business, in a competitive environment and asked the sponsor if she likened her experience of attending the seminars to that experience that he had through his involvement with his business. **SEN. MCCARTHY** agreed that education is a lifetime process and she stated that she has continued to further her education each time she attends a seminar in order to help her constituents.

**SEN. JACK WELLS** referred to Section 5 that points out there is no obligation to the state of Montana. In reference to Subparagraph 2 of that section the Superintendent of Public Instruction could

now adopt rules. Would there be a conflict between these two statements. **SEN. MCCARTHY** did not see a conflict.

**SEN. WELLS** questioned the likelihood of whether the state would be funding the cost of dues in the future. **SEN MCCARTHY** stated that she had asked the same question. She was told that the organization has enough grants and funding that they do not anticipate requiring Montana to be a dues paying member in the near future.

**SEN. ALVIN ELLIS** queried why we have two people from higher education on the board. **SEN. MCCARTHY** replied that the committee is free to change that requirement. The commission asks only for seven members.

**SEN. SPRAGUE** referred to the hand out and asked for clarification to the cost of joining the organization and asked if there might be hidden surprises. **SEN. MCCARTHY** replied that we would not feel obligated to pay the dues and the services of the group would still be available to the state. **SEN. MCCARTHY** reminded the committee that workshops have already been provided to the state at no charge.

**SEN. BOHLINGER** noted that legislators have attended other conferences, without being paying members. At a future time **SEN. BOHLINGER** suggested that the state of Montana could undertake the membership obligation.

**Closing by Sponsor:**

**SEN. MCCARTHY** closed on SB 60.

*{Tape : 1; Side : B; Approx. Time Counter : 0 - 10}*

**HEARING ON SB 233**

**Sponsor:** **SEN. DALE MAHLUM, SD 35, MISSOULA**

**Proponents:** **Lance Melton, Executive Director of the Montana School Boards Association**  
**Dave Puyear, Director of the Montana Rural Education Association**  
**Loran Frazier, School Administrators of Montana**  
**Terry Minnon, Montana Education Association/Montana Federation of Teachers**  
**Jeff Weldon, Legislative Council for the Office of Public Instruction**  
**Bruce Dunkle, Board of Public Education**

**Opponents:**        **Scott Crichton, American Civil Liberties Union**

**Opening Statement by Sponsor:**

**SEN. MAHLUM, SD 35**, commented that this bill has one issue which is safety of children. This legislation tries to inform potential employers that a person applying for a position has had a background check. This bill states that a fee will be charged for this background check yet the fee is minimal so this would not inhibit a person from applying for a position. Montana is one of the remaining states that has not implemented this program even though federal law already exists for fingerprinting.

The bill will not apply to teachers that are already certified and teaching in the system. It only applies to new applicants for certification starting July, 1, 2001. It will also apply to non-certified employees and volunteers, at the local level, if the person has unsupervised access to children.

***{Tape : 1; Side : B; Approx. Time Counter : 10 - 18}***

**Proponents' Testimony:**

**Lance Melton, Montana School Boards Association**, testified in support of SB 233. He submitted written testimony, **EXHIBIT (eds13a02)** and also presented additional information, **EXHIBIT (eds13a03)**.

**Dave Puyear, Montana Rural Education Association**, testified in strong support of SB 233. **Mr. Puyear** informed the committee that **MREA's** state board of directors reviewed their position on this bill and firmly believe in it and strongly support it. **Mr. Puyear** shared his experience hiring personnel in a rural school. He stated that many times the hiring is done under the worst conditions. He stated that this would provide one more tool in the screening process.

**Loran Frazier, School Administrators of Montana**, rose in support of SB 233. This bill addresses a resolution that came out of the SAM Delegate Assembly.

**Terry Minnow, MEA/MFT**, appeared before the committee in support of SB 233. **MEA** and **MFT** were involved in developing this legislation last session. **Ms. Minnow** stated that they support this bill because fingerprinting is already appearing across Montana. At least 20 schools are already doing fingerprinting. If a school board wishes to require background checks and fingerprinting, SB 233 establishes a fair practice for doing so.

Under this bill school districts would be able to share information gained by background checks and fingerprinting of classified staff and volunteers eliminating expensive and unnecessary duplication. Secondly, this bill does not require teachers and classified school employees, who are already working in Montana schools to be fingerprinted. Third, although many people don't like the idea of fingerprinting, that is a battle that has been lost on the federal level. Every other state west of the Mississippi is fingerprinting school employees.

**Jeff Weldon, Office of Public Instruction**, urged the committee to pass SB 233.

**Bruce Dunkle, Board of Public Education and Certification Practices and Advisory Council** informed the board that his office concurs with the previous statement. **Mr. Dunkle** added that his office frequently gets call from people, out of state, inquiring whether they can get certified in the state of Montana without being fingerprinted.

*{Tape : 1; Side : B; Approx. Time Counter : 23 - 30}*

**Opponents' Testimony:**

**Scott Crichton, American Civil Liberties Union**, opposed fingerprinting of educators as burdensome and unnecessary. Part of the concern is that we are starting out with a small class of people and that is likely to expand.

**Mr. Crichton** questioned the reasoning for singling out teachers. Mistreatment by teachers is so rare that it is not even tracked by the U.S. Department of Health and Human Services.

**Mr. Crichton** insisted that we should use our resources more effectively by using them in a way that will have the greatest positive effect on reducing child abuse with the least negative fallout. **Mr. Crichton** suggested that we use the money that this program would cost for better training of school personnel on how to recognize signs of child abuse and to teach students how to better protect themselves from potentially abusive situations. **Mr. Crichton** urged a do not pass for SB 233.

*{Tape : 2; Side : A; Approx. Time Counter : 0 - 5}*

**Informational Testimony:** None

**Questions from Committee Members and Responses:**



**SEN. JON ELLINGSON** questioned Lance Melton on the accuracy of statistics cited by **Mr. Crichton**. **Lance Melton** responded that it is ironic to cite those statistics when Montana is one of the few remaining states that doesn't do background checks. He suggested that those statistics are as low as they are because of the very safeguards that are imposed in other states.

**SEN. ELLINGSON** asked **Mr. Melton** if he could gather statistics of instances of abuse that were reported in Montana. **Mr. Melton** responded that he would not have that information.

**SEN. ELLINGSON** felt that information might be useful and inquired of **Mr. Melton** whether he could get that information for the committee. **Mr. Melton** remarked that he would ask the Office of Public Instruction. **Mr. Melton** also noted that existing teaching personnel and employees in the state are not covered in this bill.

**SEN. ELLINGSON** wondered if **MEA/MFT** would be supporting this bill if it would require all teachers, now employed in the state of Montana, to be fingerprinted. **Terry Minnow** answered that **MEA/MFT** would not be supporting this bill if this were the case.

**SEN. JOHN BOHLINGER** asked for clarification on Line 29 as to whether the cost of a background check would be charged to the applicant. **SEN. MAHLUM** stated that would be correct. This bill would not cost the school district money. The potential employee bears the charges.

**SEN. BOHLINGER** commented that the cost would be of no financial burden to the school district, the cost being absorbed by the applicant. **SEN. BOHLINGER** wondered if there are other industries that require fingerprinting and background checks that would pass this cost on to the applicant. **SEN. MAHLUM** responded that he has personally had his background checked, having been fingerprinted in Washington, California, and Arizona and that he bore the cost of that check.

**SEN. JIM ELLIOT** wondered if the Office of Public Instruction certifies teachers in private schools and whether this bill would apply to these teachers. **Mr. Jeff Weldon** asked that the question be redirected to **Marilyn Roberts** who works in the area of certification. **Ms. Roberts** stated that if a school is accredited by the Montana Board of Public Education, those teachers must be certified. If the school does not hold that accreditation then that school's hiring procedures are up to them.

**SEN. ELLIOT** questioned targeting the entering teachers. He stated that he does not understand why the bill is targeting only new hires. **Mr Weldon** responded that the bill was designed by the parties interested in this proposal.

**SEN. ELLIOT** inquired of **SEN. MAHLUM** if he would object to expanding the bill to include those already working in a school district. **SEN. MAHLUM** responded that he would object.

**SEN. ELLIS** requested that **Lance Melton** present the committee with information regarding criminal activity, pertaining to teachers and administrators, going back 12 years. **Mr. Melton** stated that he would do his best to fulfill that request.

**SEN. ELLIS** asked **Marilyn Roberts** if there was any data kept on the number of out of state applicants making application, for certification, to this state. **Ms. Roberts** stated that 1500-1800 applications are received each year with roughly 700 coming from Montana institutions.

**SEN. ELLIS** asked **Mr. Scott Crichton** to provide the committee with all the occupations, especially government related, that require background checks. **Mr. Crichton** stated that he would gladly respond to the request of the committee.

**SEN. DEBBIE SHEA** asked how many schools are currently participating in fingerprinting and background checks. **Lance Melton** remarked that the number is in the neighborhood of the high twenties. **SEN. SHEA** him if he would provide that information to the committee. **Mr. Melton** stated that he could furnish the committee with that information.

**SEN. SHEA** continued by asking if **Mr. Melton** would find out if there had been any instances of abuse. **Mr. Melton** stated that there are and have been some issues in Montana schools pertaining to teachers and administrators with undetected criminal convictions.

**SEN. DON RYAN**, in referring to Line 17, Page 2 of the bill, asked if the dollar amount changes on that line, will the Office of Public Instruction be responsible for the increased cost of the background check. **Mr. Weldon** replied that that would be accurate. **SEN. RYAN** suggested that the committee would be able to correct that so that the actual cost would be taken care of instead of readjusting the cost during every legislative session.

**SEN. RYAN** asked for clarification from **Larry Fasbender, Deputy Dirctor of the Department of Justice**, in reference to Page 2,

Lines 24 and 25, that states, information regarding arrests without conviction may not be considered in the hiring or appointment process of the school district. **Deputy Fasbender** stated, that with non-conviction of a crime, the schools can not assume that the court system did not do it's job. When a search is done, through the fingerprint process, it will not show that an incidence like this occurred. The criminal record would only be made available if it shows that a person was guilty of a crime.

*{Tape : 2; Side : A; Approx. Time Counter : 5 - 30}*

**SEN. COBB** commented on Page 3, Lines 13, 14, 26 and 28 which deals with dissemination of criminal record information stating that this could become a constitutional issue.

**SEN. SPRAGUE** asked **Mr. Fasbender** if the **Attorney General's Office** under **Joe Mazurek** supported this form of legislation. **Deputy Fasbender** responded that they provided information as far as this legislation was concerned but did not take a formal position.

**SEN. SPRAGUE** continued by asking if the department, at the time, could not do a background check accurately. **Deputy Fasbender** agreed due to the fact that the background checks were name based, using names, birth dates and social security numbers. He added that a fingerprint check is positive.

**SEN. SPRAGUE** wondered if fingerprinting kits were available to school districts, thus helping to defray the cost. **Deputy Fasbender** responded that it would be up to the applicant to determine the process to get the fingerprinting and the applicant would also pay for the cost.

**SEN. SPRAGUE** asked for clarification on the sophistication of the Montana fingerprinting facility. He wondered why the FBI charges a cost when Montana has a sophisticated system. **Deputy Fasbender** informed the committee that in order to access information world wide the state needs to go through the FBI.

**SEN. SPRAGUE** asked if these type of people are fairly mobile. **Deputy Fasbender** stated that our society has become quite mobile and the fact that Montana is the only state west of the Mississippi that does not do these checks means that Montana could become a target for those having problems in other states.

**SEN. SHEA**, asked Lance Melton about the gaps in the law pertaining to fingerprinting. **Mr. Melton** stated the gaps are at the licensing level.

**SEN SPRAGUE** stated that the bill states that districts, may charge. **Mr. Melton** added that the next subsection states that the district may charge or absorb the cost into their existing programs.

*{Tape : 2; Side : B; Approx. Time Counter : 0 - 15}*

Closing by Sponsor:

**SEN. MAHLUM** closed on SB 233.

*{Tape : 2; Side : B; Approx. Time Counter : 15 - 16}*

**ADJOURNMENT**

Adjournment: 4:55 P.M.

---

SEN. BILL GLASER, Chairman

---

LINDA ASHWORTH, Secretary

BG/LA

**EXHIBIT (eds13aad)**